

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

JOSEPH R. TOMELLERI,
Plaintiff,

v.

CHARLES MILL MARINA, LLC,
Defendant.

No.

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Joseph R. Tomelleri, by through his counsel of record, and for his complaint against Defendant Charles Mill Marina, LLC, states as follows:

GENERAL NATURE OF THE CASE

1. This case involves Defendant's copyright infringement of at least two (2) fish illustrations created and owned by Joseph Tomelleri. Defendant used the illustrations to advertise and promote its marina business, as well as selling products related to the use of the illustrations.

JURISDICTION AND VENUE

2. This claim is brought pursuant to 17 U.S.C. § 101, et seq.

3. This Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this case arises under the copyright laws of the United States. (17 U.S.C. § 101 et seq.).

4. This Court has personal jurisdiction over Defendant because Defendant is organized in, has its registered agent in, and has members for conducting business in Ohio.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) because Defendant is located in this judicial district.

PARTIES

6. Plaintiff is an adult individual and a resident of the State of Kansas.

7. Defendant is an Ohio limited liability company.

8. Defendant may be served via its registered agent, Robert B. Schraedly, at 1575 Clearview Dr., Lexington, OH 44904; and/or at its physical address and place of business, Charles Mill Marina, 1277 OH-430, Mansfield, OH 44903, within Ashland County, Ohio.

TOMELLERI'S BACKGROUND AND WORKS

9. Plaintiff Joseph Tomelleri is an artist and a trained biologist who has spent most of his working life collecting, studying, and illustrating North American fish species. He is one of the world's best fresh water fish illustrators.

10. Over a 35-year career, Mr. Tomelleri has created over 1300 hand drawn illustrations of fish in various life cycles.

11. Mr. Tomelleri's illustrative process involves his expertise gained from many years of education, his observations of fish in the wild and obtaining and preserving specimens.

13. Mr. Tomelleri hand draws his illustrations.

14. He incorporates his own expression of color patterns, fin arrangements and other characteristics he believes most significant for a particular fish species in a particular life cycle phase.

15. His illustrations have been published in numerous scientific studies, journals, books, magazines, and fish identification guides.

16. Mr. Tomelleri is the sole owner and proprietor of all rights, titles, and interest in, and to, the copyrights for the illustrations at issue in this case (the "Illustrations").

17. Joseph Tomelleri is and always has been the exclusive owner of the Illustrations.

18. Each of the Illustrations is covered by a copyright registration owned by Mr. Tomelleri.

19. The following is Mr. Tomelleri's Illustration at issue in this case and the corresponding registration information.

No.	Illustration	Reg. #	Reg. Date
1	Walleye	VA 2 116913	01/26/2018
2	Yellow Perch	VA 1 783041	06/17/2011

DEFENDANT'S INFRINGING CONDUCT

20. Defendant operates a full-service marina and other freshwater recreational lake amenities business.

21. In order to advertise and promote its business, and sell merchandise, Defendant maintains a website at the URL, <https://charlesmillmarina.com/> (the "Website").

22. Plaintiff discovered that Defendant, without authorization, reproduced and displayed the Illustrations or their derivatives on the Website.

23. The Illustrations used on the Website were used to promote its marina business and fishing on the lake.

24. Specifically, Defendant used the Illustrations or their derivatives to sell merchandise, live bait, boat rentals and other lake necessities.

25. Defendant derived revenue from goods and services sold on the Website with the infringing use of the Illustrations.

COUNT I - COPYRIGHT INFRINGEMENT

(17 U.S.C. § 501)

26. Plaintiff restates the allegations contained in paragraphs 1-25 as if fully set forth herein.

27. Plaintiff has valid copyrights and copyright registrations for the Illustrations.

28. Defendant has infringed Plaintiff's copyrights in his Illustrations by preparing derivative works based upon the Illustrations.

29. Defendant has infringed Plaintiff's copyrights in his Illustrations by reproducing, and publicly displaying unauthorized copies of the Illustrations and/or derivatives thereof on the Website.

30. Defendant has infringed Plaintiff's copyright in his Illustrations by distributing the Illustrations to the public via its Website.

31. To the extent that Defendant does not acknowledge copying the Illustrations, Defendant had access to the Illustrations and the images used by Defendant are strikingly similar to the Illustrations.

32. As a result of Defendant's above-described acts of copyright infringement, Plaintiff has sustained damages including lost licensing revenue in an amount not yet ascertained and profits that should be disgorged to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Plaintiff prays for judgment against Defendant as follows:

a. Under 17 U.S.C. § 502, grant temporary and final injunctions on such terms as it deems reasonable to prevent or restrain infringement of Plaintiff's copyright.

b. Under 17 U.S.C. § 503, order the impounding and ultimately destruction, on such terms as it may deem reasonable, of any records or material involved in Defendant's copyright infringement.

c. Under 17 U.S.C. § 504, award Plaintiff's actual damages and any additional profits of Defendant, or, if Plaintiff so elects before judgment is entered, award statutory damages.

d. Under 17 U.S.C. § 505, award costs to Plaintiff;

e. Under 17 U.S.C. § 505, as the prevailing party in a Copyright lawsuit, award to Plaintiff reasonable attorneys' fees.

f. Awarding Plaintiff all available pre-judgment and post-judgment interest on all amounts of any judgment; and

g. Grant to Plaintiff such further relief as may be equitable and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

/s/ Stephen E. Schilling

Stephen E. Schilling (OH 0086897)

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